IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 541 of 2006

HOTURAM
V/S
SOSAR BAI

Mr. KC SAMDARIYA, for the appellant / petitioner

Mr. SAJJAN SINGH, for the respondent

Date of Order : 29.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner, perused the impugned order.

Learned counsel read to me the operative part and relevant part of the earlier order of the Appellate Court dated 23.10.2001. It is contended by learned counsel for the petitioner that by order dated 23.10.2001, the learned lower appellate Court had set aside the judgment and decree of the learned trial Court, and had decided the appeal, as such it was not open to the learned trial Court, to thereafter, send the matter back to the appellate Court purporting to submit the findings, rather the trial Court should have decided the suit as such in accordance with the findings. It is contended that that being the position, it was not open to the learned lower appellate Court to restore the appeal, and proceed to hear the matter as none was pending.

I have considered the submissions and find that in the order dated 23.10.2001, the learned lower appellate Court had set aside the findings of the learned trial Court, to the extent he decided the question of denial of the title of the landlord, and remitted the matter to the learned trial Court to decide that controversy. Of course in the order dated 23.10.2001, it is mentioned that the judgment and decree of the learned trial Court was set aside, and the appeal was allowed, but then that judgment is required to be intelligently read, and if so read, it only means that the learned lower appellate Court had set aside the finding of the learned trial Court on the aspect of denial of title of the landlord on the ground that this matter was not put in issue, and the defendant was prejudiced on that count. In that view of the matter, if the learned trial Court had submitted his finding on the issue back to the learned lower appellate Court, and consequently, the learned lower appellate Court has restored the appeal, no fault can be found therewith.

It is also significant to note that the order of the learned trial Court dated 17.5.2002 does not purport to decide the suit, while if the things were, as contended by the learned counsel for the petitioner, the learned trial Court was required to pass a decree dismissing the suit in consonance with the findings arrived at, but then that order of the learned trial Court dated 17.5.2002 had also not been challenged either, to contend that the suit was

required to be dismissed. In that view of the matter, when the suit has not been dismissed by the learned trial Court or decreed either, and if the learned lower appellate Court has set aside the findings, and as contended by learned counsel for the petitioner, that the judgment and decree of the learned trial Court was specifically set aside, the resultant position would emerge to be that the litigation remains in medio, inasmuch as, the learned trial Court had decided the issues, but has not decided the litigation, and the earlier decision has been set aside by the appellate Court. In my view, such a situation cannot be allowed to survive, and if the learned lower appellate Court by the impugned order has construed the earlier order to be one under Order 41 Rule 25, in my view, no error can be found in it.

Consequently, the revision petition is dismissed summarily.

(N P GUPTA),J.

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